

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 15.02.2019

PRONOUNCED ON : 27.02.2019

CORAM:

THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA

Crl.RC.Nos.228 to 232 of 2019
Crl.MP.Nos.2436, 2437, 2440, 2441, 2442 of 2019

1.N.Rajeswari	Petitioner/A2/Crl.RC.228/2019
2.R.Karthik	Petitioner/A6/Crl.RC.229/2019
3.R.Latha	Petitioner/A4/Crl.RC.230/2019
4.R.Kavitha	Petitioner/A5/Crl.RC.231/2019
5.R.Sudha	Petitioner/A3/Crl.RC.232/2019

Vs

State by Inspector of Police
Vigilance and anti-Corruption,
Kancheepuram Respondent in all Crl.RCs

Prayer:- These Criminal Revision Petitions are filed, against the orders of dismissal, dated 28.11.2018, made in Crl.MP.Nos.1853, 1857, 1855, 1856 and 1854 of 2011 in Spl.CC.No.9 of 2010, by the Chief Judicial Magistrate/Special Judge, Chengalpattu.

For Petitioners :Mr.Shanmuga Sundaram, SC for
Mr.A.Gopinath

For Respondent : Mr.K.Prabakar, APP

COMMON ORDER

These Criminal Revision Petitions are filed, against the orders, dated 28.11.2018, made in Crl.MP.Nos.1853, 1857, 1855, 1856 and 1854 of 2011 in Spl.CC.No.9 of 2010, by the Chief Judicial Magistrate/Special Judge, Chengalpattu, dismissing the said discharge petitions filed under Section 239 of Cr.PC by the Petitioners/A2, A6, A4, A5 and A3.

2. The facts, which are necessary for disposal and leading to filing of these Criminal Revision Petitions, are as follows:-

a. On the basis of the information collected during the preliminary enquiry conducted by the Officials of the Vigilance and Anti Corruption, Kancheepuram Unit, vide PE-44/07/REV/KM, a First Information Report was

registered against N.Ragunathan, Deputy Tahsildar (Election), Thirukazhukundram Taluk Office, Kancheepuram District, in FIR.No.25/AC/ 2007, dated 28.12.2007, under Sections 13(2) read with 13(1)(e) of the Prevention of Corruption Act, 1988, as a public servant and by abusing his official position, for having accumulated assets from the year 2003, in his name and in the names of his family Members, by investing a total amount of Rs.79,09,795/-, which is exclusive of the amount spent towards documents and registration charges, disproportionate to his salary income and rental income, fixing the check period as 01.01.2003 and 31.07.2007, tentatively. In and by the said First Information Report, it was decided that on the basis of prima facie materials, gathered during the course of the confidential enquiry, which justifies that the accused officer is in possession of assets/ pecuniary resources, in his name and in the names of his dependants, it was just and necessary that an open investigation was to be done to bring out the full facts, concerning the assets and liabilities of the accused officer in order to correctly workout the actual quantum of disproportion in his assets. It is also stated in the said First Information Report that the original First Information Report has been submitted to the Court of Chief Judicial Magistrate cum Special Judge, Chengalpattu.

b. Thereafter, in the investigation conducted by the Inspector of Police, Vigilance and Anti-Corruption, Kancheepuram, on the basis of the statement of the witnesses and scrutiny of documentary evidence, Statements I to VII were prepared, quantifying the disproportionate assets/pecuniary resources with the accused officer, as on 03.01.2004, at Rs.3,53,32,408.26/-. Thereafter, in order to give final opportunity to satisfactorily account for the disproportion, a letter dated, 23.05.2008, was issued to the accused officer, calling upon him to offer a written explanation, on or before 28.05.2008. The said accused Officer has also sent a detailed explanation, dated 18.06.2008, stating that since his savings exceeded the value of the assets acquired during the check period, the accusation of assets acquired disproportionate to his known sources of income is not substantiated and hence, further action should be dropped. By proceedings, dated 28.07.2008, the said accused officer, N.Ragunathan was placed under suspension.

c. Thereafter, a final report dated 23.06.2010, was filed against the accused officer, N.Ragunathan, his wife R.Rajeswari and their daughters, R.Sudha, R.Latha and R.Kavitha and their son R.Karthick, arraying them as A1 to A6, stating that between 01.04.2003 to 03.01.2008 (the check period), A1, being a public servant, committed the offence of 'criminal misconduct by public servant', by acquiring and being in possession of pecuniary resources

and properties in his name and in the names of A2 to A6, which were disproportionate to his known sources of income to the extent of Rs.3,52,98,981.66/-, for which he could not satisfactorily account for and thereby A1 committed the offence under Section 13(2) read with 13(1)(e) of the Prevention of Corruption Act, 1988 and in the course of the same transaction, during the above check period, A2 to A6 abetted A1 in the commission by him of the above said offence of 'criminal misconduct by public servant', by A2 to A6 intentionally aiding A1 and by holding on behalf of A1, a substantial portion of the said properties and pecuniary resources in their names, A2 to A6 committed the offence of abetment under Section 109 of IPC read with Section 13(2) read with 13(1)(e) of the Prevention of Corruption Act, 1988.

d. The District Collector, Kancheepuram, after carefully considering the materials such as the First Information Report, statements of the witnesses and other relevant documents and the report of the Director, Vigilance and Anti-Corruption, Chennai, has accorded sanction, under Section 19(1)(c) of the Prevention of Corruption Act, 1988, by proceedings, dated 06.08.2010, to prosecute the accused Officer, N.Ragunathan and for taking cognizance of the said offence by a Court of competent jurisdiction. The case was taken on file in Spl.CC.No.9 of 2010, by the Court of Chief Judicial Magistrate Cum Special Judge, Chengalpattu.

e. Before the Trial Court, the Petitioners/A2, A4, A6, A5 and A3, have filed discharge petitions under Section 239 of Cr.PC in CrI.MP.Nos.1853, 1857, 1855, 1856 and 1854 of 2011, respectively, in Spl.CC.No.9 of 2010 and in the said discharge petitions, separate counters have also been filed by the complainant. In and by separate impugned orders, the Trial Court dismissed the said discharge petitions. As against the same, the present Criminal Revision Petitions have been filed by the Petitioners/A2, A6, A4, A5 and A3, respectively.

3. This Court heard the submissions of the learned counsel on either side.

4. The learned counsel for the Petitioners has assailed the impugned order, as illegal and contrary to law on the grounds that the final report is not based on valid evidence both oral and documentary and that the Statements I to VII have not been compiled with by the Respondent on proper lines and that if the assets in the name of the Petitioner/A2, who is the wife of A1, had been considered, the scale would have tilted in favour of the Petitioner/A2 and that the Court below failed to appreciate the provisions of Section 13(2) read with 13(1)(e) of the Prevention of Corruption Act, 1988, in a proper perspective. The learned counsel would further submit that the Respondent did not take into consideration the income

accrued to the credits of the Petitioner prior to the commencement of the check period, thereby violating the principles laid down by this Court and that though there are enough documents filed by the Petitioner/A2, the Respondent has miserably failed to club the assets, income and expenditure of the Petitioner/A2 and also failed to consider the Income Tax Returns.

5. The learned counsel for the Petitioners would further submit that the Petitioner/A2 was running a real estate business, under the name and style of SLKK Promoters and that the Respondent failed to consider the monetary transactions involved in the said business and the books of accounts. The learned counsel would further submit that the Petitioner/A2 has filed a petition in Cr.MP.No.130 of 2008, seeking return of a sum of Rs.48 lakhs, on the ground that it belongs SLKK Promoters, which was run by her own accord independently, after her retirement. In the said petition filed by A2, the complainant has filed, a counter, stating that the firm is a fictitious one and did not function, at any time. Since the said Cr.MP.No.130 of 2008 was dismissed, she has filed Crl.RC.No.58 of 2010 before this Court, wherein also a similar counter was filed, showing the quantum of disproportionate amount as Rs.64,09,795/-. Similarly, in the counter filed by the complainant in Crl.MP.Nos.771 and 772 of 2009 before the Court of Principal District Judge, Chengalpattu, same quantum of amount towards disproportion was shown. However, in the charge sheet, a sum of Rs.3,52,98,981.66/- has been shown as the quantum of disproportionate assets and hence, the Respondent is not definite with regard to the quantum of assets and various versions in regard to the quantum of assets have been furnished at various stages.

6. The learned counsel for the Petitioners would further submit that when the Petitioner/A2 had independent sources of income, she was not given an opportunity to offer her explanation, regarding the assets, standing in her name and that no sanction under Section 19 was obtained by the Investigating Officer for prosecuting the Petitioner and the Respondent has proceeded on wrong presumption that simply, the Petitioner/A2 being the wife of A1 and residing with him, A1 acquired assets in the names of his family Members and that the Respondent having found that there is no case of disproportionate assets as against A1, a public servant, has roped the Petitioner/A2 by clubbing her assets.

7. The learned counsel for the Petitioners would further submit the Petitioner/A6, who is the son of A1, was a Engineering Graduate and as a Project Consultant, he was actively assisting his mother/A2, in the real estate business and that entire final report is based on no evidence and has been filed with an ulterior motive to drag the family Members after the trap case against A1 ended in

acquittal. In addition to the said submissions, the learned counsel for the Petitioners, on behalf of the Petitioner/A6, has also raised other grounds similar to those raised on behalf of the Petitioner/A2.

8. The learned counsel for the Petitioners would further submit that the Petitioner/A4, who is a M.Sc., M.Phil Graduate, was employed as a Lecturer in a College, from the year 2001 and she was also earning income from taking tuitions to school children and she used to give her earnings to A2, who used to deposit the same in banks and other investments. In addition to the said submissions, the learned counsel for the Petitioners, on behalf of the Petitioner/A4, has also raised other grounds similar to those raised on behalf of the Petitioner/A2.

9. The learned counsel for the Petitioner would further submit that the Petitioner/A5, who is the daughter of A1, and M.C.A, M.Phil Post Graduate, was working as a Lecturer in a College from 2006 and she was also earning income from taking tuitions to school children and she used to give her earnings to A2, who used to deposit the same in banks and other investments and that the Petitioner/A5 was also a partner in the said real estate business. In addition to the said submissions, the learned counsel for the Petitioners, on behalf of the Petitioner/A5, has also raised other grounds similar to those raised on behalf of the Petitioner/A2.

10. The learned counsel for the Petitioners would further contend that the Petitioner/A3, who is the daughter of A1, was working in the Commercial Tax Department and she gave her earning to her mother, A2, who in turn invested the same in banks and for acquisition of the properties. In addition to the said submissions, the learned counsel for the Petitioners, on behalf of the Petitioner/A3, has also raised other grounds similar to those raised on behalf of the Petitioner/A2.

11. The learned counsel for the Petitioners has contended that A1, A2 and A3 are Government Servants and that they are separate persons and that the mere fact that they are living jointly under one roof will not be sufficient on facts to permit a joint trial, that too when they have separate sources of income and hence, the joint trial initiated against them is vitiated, for which, he would rely on the decision of this Court, reported in 1990 LW CrL.228 (Thiyagarajan Vs. State). He would ultimately contend that if the assets in the name of the Petitioners, the income accrued to the credits of the Petitioners, prior to the commencement of the check period and the Income Tax Returns, had been considered, the scale would have tilted in favour of the Petitioners. that the Court below failed to consider the whole issue in a proper perspective and hence, the impugned orders of the Court below, dismissing the discharge petitions filed by the Petitioners, is

unjust, contrary to law and facts of the case and consequently, the impugned orders are liable to be set aside.

12. The learned counsel for the Petitioners would further submit that the entire Prosecution is tainted with mala fides and that A1 accused officer was earlier tried for having accepted a bribe pursuant to a trap proceedings and that he was acquitted by the Trial Court and only in order to wreck vengeance, the case has been filed by the Respondent Department. He would submit that a steep jump from Rs.64,09,795/- to Rs.3,52,98,981.66/- towards the quantum of disproportionate assets, would show that the action of the Respondent is tainted with mala fides. In support of his contentions, the learned counsel for the Petitioners would rely on various decisions, viz, 2014 3 MWN Cr. 70 (K.Thavasi Vs. State), 2006 1 SCC 420 (DSP, Chennai Vs. K.Inbasakaran), 1990 LW CrL. Parts 5 and 6 - 228 (Thiyagarajan Vs. State), order, dated, 27.04.2017 of this Court, made in CrL.RC.Nos/702 and 703 of 2016 and order dated, 22.03.2012, of this Court made in CrL.A.No.528 of 2010.

13. Per contra, the learned Additional Public Prosecutor for the Respondent would contend that no mini trial is contemplated at the stage of considering the discharge petition and that only probative value of the materials has to be gone into to see if there is a prima facie case for proceeding against the accused and that the Court is not expected to delve deep into the matter and that if the Court, on the basis of the materials on record on its probative value, deems that the accused, prima facie, might have committed the offence, it can frame the charge and that at the stage of discharge, the Trial Court cannot look into the material of the defence. He would further submit that mere fact the accused were assessed to separate income and they paid income tax cannot be a ground to discharge the accused persons and that the property in the name of an income tax assessee itself cannot also be a ground to hold that it actually belongs to that assessee. He would further contend that a defective or illegal investigation is also not a ground for discharge of the accused and that based on the materials available on record, the Court below has come to the right conclusion that the accused, prima facie, committed the offence as alleged by the Prosecution and accordingly, rightly dismissed the discharge petitions.

14. The learned Additional Public Prosecutor for the Respondent would further contend that framing of charges against the Petitioners is in consonance with Sections 227 and 228 of Cr.PC and that the submissions made by the learned counsel for the Petitioners, with regard to the merits of the case, as stated supra, are all not the grounds for discharge of the Petitioners from the criminal

case and that defences or grounds can be raised at the time of trial and that the Court below has rightly, by the impugned orders, dismissed the discharge petitions, which warrants no interference by this Court, in view of the decisions of the Honourable Supreme Court reported in 2014 11 SCC 709 (State of Tamil Nadu Vs. N.Suresh Rajan and others), 2010 9 SCC 368 (Sajjan Kumar Vs. CBI) and the judgement of the Honourable Supreme Court dated, 06.01.2014, made in CrI.A.No.22-23 of 2014 and the order of this Court, dated 23.08.2016, made in Cr.RC.No.850 of 2016.

15. The learned Additional Public Prosecutor would further submit that the explanation had been sought from A1, not only with regard to his property, but also the properties belonging to his family Members, who are his wife and children and that A1 was not able explain with regard to the source of income for purchase of the properties and that the Respondent, after careful analysis, has filed the final report. He would further submit that though it is true that during the course investigation, in certain counters, the Respondent has stated that the value of the disproportionate assets is Rs.64,09,795/-, but after conclusion of the investigation, taking into consideration the entire materials, the quantum of disproportionate assets had been calculated at Rs.3,52,98,981.66/-. He would further submit that the decisions relied on by the learned counsel for the Petitioners are in respect of appeals, wherein they have been decided after a full fledged trial, after appreciation of evidence, whereas the case on hand is at the stage of framing charges and that the scope of the discharge petition is very limited and that the Honourable Supreme Court has held that a mini trial cannot be contemplated at the stage of considering the discharge petitions.

16. The learned Additional Public Prosecutor would submit that what is to be looked into is the only probative value of the materials to see if there is a prima facie case for proceeding against the accused. He would submit that though it is true that at the time of consideration of an application for discharge, the Court cannot act as a mouthpiece of the Prosecution or act as a post office and that it is trite that at the stage of consideration of an application for discharge, the Court has to proceed with an assumption that the materials brought on record by the Prosecution are true. He would further submit that the Respondent has furnished ample materials to frame charges against the accused and that along with the final report, details have been furnished by way of seven statements, namely, Statements I to VII.

17. The learned Additional Public Prosecutor would further submit that the Statement-I is the details of the assets standing in the name of A1 and his family Members, A2 to A6, as on 1.4.2003. The Statement-II is the details

of the assets that stood to the credit of A1 and his family Members, A2 to A6, at the end of the check period i.e. as on 3.1.2008. The Statement-III is the details of the income from known sources during the check period from 01.04.2003 to 03.01.2.008. The Statement-IV is the details of expenditure incurred by A1 and his family Members, during the check period from 01.04.2003 to 03.01.2.008. The Statement-V is the value of the assets acquired by A1 during the check period from 01.04.2003 to 03.01.2.008. The Statement-VI is the details of likely saving during the check period from 01.04.2003 to 03.01.2.008. The Statement-VII is the calculation, wherein the disproportionate assets have been assessed to 291% during the check period from 01.04.2003 to 03.01.2.008. He would further submit that 104 witnesses have been cited in the charge sheet and that finding that there are enough and sufficient materials against the accused/ Petitioners for having abetted A1, accused Officer, the Court below has rightly dismissed the applications for discharge.

18. I have given my careful and anxious consideration to the rival contentions put forward by the learned counsel on either side and thoroughly scanned through the entire evidence available on record and also perused the impugned orders, including the relevant provisions of the Statue and authorities cited by the learned counsel on either side.

19. The facts, in a nutshell, are that on the basis of the information collected during the preliminary enquiry, a First Information Report was registered against A1, accused Officer, vide FIR.No.25/AC/ 2007, dated 28.12.2007, under Sections 13(2) read with 13(1)(e) of the Prevention of Corruption Act, 1988. During the investigation, on the basis of the statement of the witnesses and scrutiny of documentary evidence, Statements I to VII were prepared, quantifying the disproportionate assets/pecuniary resources with the accused officer, as on 03.01.2004, at Rs.3,53,32,408.26/-. To the final opportunity letter, dated, 23.05.2008, an explanation, dated 18.06.2008 was sent by the accused officer/A1. Thereafter, a final report dated 23.06.2010, was filed against the Petitioners/A2 to A6 and A1, as stated above. The District Collector, Kancheepuram, has also accorded sanction, under Section 19(1)(c) of the Prevention of Corruption Act, 1988, by proceedings, dated 06.08.2010, to prosecute the accused. When the case was taken on file in Spl.CC.No.9 of 2010, the Petitioners/A2, A4, A6, A5 and A3, have filed above said discharge petitions under Section 239 of Cr.PC and in the said discharge petitions, separate counters have also been filed by the complainant. In and by separate impugned orders, the Trial Court dismissed the said discharge petitions. It is at this stage that the present Criminal Revision Petitions have been filed by the

Petitioners/A2, A6, A4, A5 and A3, respectively.

20. The sum and substance of the contentions made by the learned counsel for the Petitioners mainly on the following grounds:-

- a) The final report is not based on valid evidence and the Statements I to VII have not been compiled by the Respondent on proper lines.
- b) If the assets in the name of the Petitioners, the income accrued to the credits of the Petitioners, prior to the commencement of the check period and the Income Tax Returns, had been considered, the scale would have tilted in favour of the Petitioners.
- c) There is no proper appreciation of the provisions of Section 13(2) read with 13(1) (e) of the Prevention of Corruption Act, 1988.
- d) The Respondent is not definite with regard to the quantum of disproportion, since various versions in regard to the quantum of assets have been furnished at various stages.
- e) The Petitioners are not given opportunity to offer their explanation, regarding the assets, standing in their respective names.
- f) No sanction under Section 19 was obtained by the Investigating Officer for prosecuting the Petitioners/
- g) With an ulterior motive to drag the family Members after the trap case against A1 ended in acquittal, In addition to the said submissions, the learned counsel for the Petitioners, on behalf of the Petitioner/A6, has also raised other grounds similar to those raised on behalf of the Petitioner/A2.
- h) Joint trial initiated against the Petitioners is vitiated and that the Court below failed to consider the whole issue in a proper perspective.

21. Though there are several grounds raised by the learned counsel for the Petitioners, since it is at the stage of framing charges, it is suffice, if the questions as to whether the Petitioners should be discharged from the criminal charges and whether there are prima facie materials on its probative value to come to the conclusion

that the Petitioners committed the offence as alleged by the Prosecution, are answered.

22. Before advertng to the claim of the parties, it is just and necessary to extract the impugned charges and relevant provisions of the Statue.

23. The impugned charges levelled against A1 and the Petitioners/A2 to A6, are extracted as under:-

i. During the period between 01.04.2003 to 03.01.2008 (the check period), A1, N.Ragunathan, being a public servant, committed the offence of 'criminal misconduct by public servant', by acquiring and being in possession of pecuniary resources and properties in his name and in the names of A2 to A6, which were disproportionate to his known sources of income to the extent of Rs.3,52,98,981.66/-, for which he could not satisfactorily account for and thereby A1 committed the offence under Section 13(2) read with 13(1)(e) of the Prevention of Corruption Act, 1988.

ii. In the course of the same transaction, during the above check period, A2 to A6 abetted A1 in the commission by him of the above said offence of 'criminal misconduct by public servant', by A2 to A6 intentionally aiding A1 and by holding on behalf of A1, a substantial portion of the said properties and pecuniary resources in their names, A2 to A6 committed the offence of abetment under Section 109 of IPC read with Section 13(2) read with 13(1)(e) of the Prevention of Corruption Act, 1988."

24. Sections 227 and 228 of Cr.PC are reproduced as under:-

227. Discharge:- If, upon consideration of the record of the case and the documents submitted herewith, and after hearing the submissions of the accused and the prosecution in this behalf, the Judge considers that there is not sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing.

228. Framing of charge:- (1) If, after such consideration and hearing as aforesaid, the Judge is of opinion that there is ground for presuming that the accused has committed an offence which-

(a) Is not exclusively triable by the Court of Session, he may, frame a charge against the accused and, by order, transfer the case for trial to the Chief Judicial Magistrate, and thereupon the Chief Judicial Magistrate shall try the offence in accordance with the procedure for the trial of warrant-cases instituted on a police report;

(b) Is exclusively triable by the Court, he shall frame in writing a charge against the accused.

(2) Where the Judge frames any charge under clause (b) of sub-section (1), the charge shall be read and explained to the accused and the accused shall be asked whether he pleads guilty of the offence charged or claims to be tried."

25. From the above said provisions, it is clear that the Court concerned has to consider all the records of the case, the documents placed, hear the submissions of the accused and the Prosecution and if there is "no sufficient ground" for proceeding against the accused, the Court shall discharge the accused by recording reasons. If after such consideration and hearing, as mentioned in Section 227, if the Court is of the opinion that "there is ground for presuming" that the accused has committed an offence, it is free to direct the accused to appear and try the offence, in accordance with the procedure, after framing charges in writing against the accused.

26. In *Dilawar Balu Kurane Vs. State of Maharashtra* (2002 2 SCC 135), the principles enunciated in *Union of India Vs. Prafulla Kumar Samal* (1979 3 SCC 4) have been reiterated and it was held thus:-

"12. Now the next question is whether a prima facie case has been made out against the appellant. In exercising powers under Section 227 of the Code of Criminal Procedure, the settled position of law is that the Judge while considering the question of framing the charges under the said section has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out; where the materials placed before the Court disclose grave suspicion against the accused which has not been properly explained the Court will be fully justified in framing a charge and proceeding with the trial; by and large if two views are equally possible and the Judge is satisfied that the evidence produced

before him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully justified to discharge the accused, and in exercising jurisdiction under Section 227 of the Code of Criminal Procedure, the Judge cannot act merely as a post office or a mouthpiece of the prosecution, but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the Court but should not make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial."

27. Reliance has been placed on the decision of the Honourable Supreme Court in the case of Sajjan Kumar v. CBI, (2010) 9 SCC 368 and the attention of this Court has been drawn to Paragraph 17 of the judgment, which reads as follows:-

17. In Union of India v. Prafulla Kumar Samal & Anr., 1979 (3) SCC 4, the scope of Section 227 CrPC was considered. After adverting to various decisions, this Court has enumerated the following principles:

(1) That the Judge while considering the question of framing the charges under Section 227 of the Code has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out.

(2) Where the materials placed before the Court disclose grave suspicion against the accused which has not been properly explained the Court will be fully justified in framing a charge and proceeding with the trial.

(3) The test to determine a prima facie case would naturally depend upon the facts of each case and it is difficult to lay down a rule of universal application. By and large however if two views are equally possible and the Judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully within his right to discharge the accused.

(4). That in exercising his jurisdiction under Section 227 of the Code the Judge which under

the present Code is a senior and experienced Court cannot act merely as a post office or a mouthpiece of the prosecution, but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the Court, any basic infirmities appearing in the case and so on. This however does not mean that the Judge should make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.

28. True it is that at the time of consideration of the applications for discharge, the Court cannot act as a mouthpiece of the Prosecution or act as a post-office and may sift evidence in order to find out whether or not the allegations made are groundless so as to pass an order of discharge. It is trite that at the stage of consideration of an application for discharge, the Court has to proceed with an assumption that the materials brought on record by the prosecution are true and evaluate the said materials and documents with a view to find out whether the facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the alleged offence. At this stage, probative value of the materials has to be gone into and the Court is not expected to delve deep into the matter and hold that the materials would not warrant a conviction. What needs to be considered is whether there is a ground for presuming that the offence has been committed and not whether a ground for convicting the accused has been made out. To put it differently, if the Court thinks that the accused might have committed the offence on the basis of the materials on record on its probative value, it can frame the charge; though for conviction, the Court has to come to the conclusion that the accused has committed the offence. The law does not permit a mini trial at this stage.

29. Reference in this connection can be made to the decision of the Honourable Supreme Court rendered in the case of Sheoraj Singh Ahlawat & Ors. vs. State of Uttar Pradesh & Another (AIR 2013 SC 52), in which, after analyzing various decisions on the point, the Honourable Supreme Court endorsed the following view taken in Onkar Nath Mishra v. State (NCT of Delhi), (2008) 2 SCC 561:-

"15. '11. It is trite that at the stage of framing of charge the Court is required to evaluate the material and documents on record with a view to finding out if the facts emerging there from, taken at their face value, disclosed the existence of all the ingredients constituting the alleged offence. At that stage, the Court is not expected to go deep

into the probative value of the material on record. What needs to be considered is whether there is a ground for presuming that the offence has been committed and not a ground for convicting the accused has been made out. At that stage, even strong suspicion founded on material which leads the Court to form a presumptive opinion as to the existence of the factual ingredients constituting the offence alleged would justify the framing of charge against the accused in respect of the commission of that offence."

30. The decisions of the Honourable Supreme Court rendered in the case Sajjan Kumar (supra) and Dilawar Balu Kurane (supra), consider the provision of Section 227 of the Code and make it clear that at the stage of discharge, the Court can not make a roving enquiry into the pros and cons of the matter and weigh the evidence as if it was conducting a trial. It is worth mentioning that the Code contemplates discharge of the accused by the Court of Sessions under Section 227 in a case triable by it; cases instituted upon a police report are covered by Section 239 and cases instituted otherwise than on a police report are dealt with in Section 245. From a reading of the aforesaid sections, it is evident that they contain somewhat different provisions with regard to discharge of an accused.

31. Under Section 227 of the Code, the trial Court is required to discharge the accused if it considers that there is not sufficient ground for proceeding against the accused. However, discharge under Section 239 can be ordered, when the Court considers the charge against the accused to be groundless. The power to discharge is exercisable under Section 245(1) when, the Court considers, for reasons to be recorded that no case against the accused has been made out which, if not repudiated, would warrant his conviction.

32. Section 227 and 239 provide for discharge before the recording of evidence on the basis of the police report, the documents sent along with it and examination of the accused after giving an opportunity to the parties to be heard.

33. Thus, there is difference in the language employed in these provisions. But, notwithstanding these differences, and whichever provision may be applicable, the Court is required, at this stage, to see that there is a prima facie case for proceeding against the accused. A reference in this connection can be made to a judgment of the Honourable Supreme Court rendered in the case of R.S. Nayak v. A.R. Antulay, (1986) 2 SCC 716. The same reads as

follows:-

"43. Notwithstanding this difference in the position there is no scope for doubt that the stage at which the magistrate is required to consider the question of framing of charge under Section 245(1) is a preliminary one and the test of prima facie case has to be applied. In spite of the difference in the language of the three sections, the legal position is that if the Trial Court is satisfied that a prima facie case is made out, charge has to be framed."

34. In the decision relied on by the learned counsel for the Petitioners reported in 2014 3 MWN Cr. 70 (K.Thavasi Vs. State), it was held as under:-

30. The learned Judge has not taken into consideration the various statements filed by the accused before the Income Tax Department on the ground that the same were submitted subsequent to the investigation. On a scrutiny of the evidence of PW.69, it has come out in evidence that the accused have filed the statements long before the registration of the First Information Report on 31.10.1996 and in fact, PW.14 has admitted that the accused appeared in the Office on 13.12.1995 itself and filed the statements as evidenced by Ex.P29, etc. 31. From the above discussions, it would follow that the disproportionate assets found by the learned trial Judge to the tune of Rs.9,14,013/- in the possession of the Appellants have been effectively and satisfactorily explained. The accused have satisfactorily shown that they had more savings to purchase the properties during the check period."

35. At the stage of a charge, the concerned Court should not concern with the proof of allegation, but has to focus on material available and form an opinion whether there is strong suspicion that the accused has committed an offence, which if put to trial, could prove the guilt. Framing of charge is not a stage, at which stage, final test of guilt is applied. The object of Section 397 of Cr.PC is to set right patent defect or an error or perversity which has crept in the proceedings. In this regard, in 2017 3 SCC 198 (State of Rajasthan Vs. Fatehkaran Mehdu), the Honourable Supreme Court had held as follows:-

"26. The scope of interference and exercise of jurisdiction under Section 397 CrPC has been time and again explained by this Court. Further, the scope of interference under Section 397 CrPC at a stage, when charge had been framed, is also well settled. At the stage of framing of a charge, the Court is concerned not with the proof of the allegation rather it has to focus on the material and form an opinion whether there is strong suspicion that the accused has committed an offence, which if put to trial, could prove his guilt. The framing of charge is not a stage, at which stage final test of guilt is to be applied. Thus, to hold that at the stage of framing the charge, the Court should form an opinion that the accused is certainly guilty of committing an offence, is to hold something which is neither permissible nor is in consonance with the scheme of the Code of Criminal Procedure.

27. Now, reverting to the limit of the scope of jurisdiction under Section 397 CrPC, which vests the Court with the power to call for and examine the records of an inferior Court for the purposes of satisfying itself as to the legality and regularity of any proceedings or order made in a case. The object of this provision is to set right a patent defect or an error of jurisdiction or law or the perversity which has crept in the proceeding.

28. It is useful to refer to the judgment of this Court in Amit Kapoor v. Ramesh Chander [Amit Kapoor v. Ramesh Chander, (2012) 9 SCC 460 : (2012) 4 SCC (Civ) 687 : (2013) 1 SCC (Cri) 986] , where scope of Section 397 CrPC has been succinctly considered and explained. Paras 12 and 13 are as follows: (SCC p. 475)

"12. Section 397 of the Code vests the Court with the power to call for and examine the records of an inferior Court for the purposes of satisfying itself as to the legality and regularity of any proceedings or order made in a case. The object of this provision is to set right a patent defect or an error of jurisdiction or law. There has to be a well-founded error and it may not be appropriate for the Court to scrutinise the orders, which upon the face of it bears a token of careful consideration and appear to be in accordance

with law. If one looks into the various judgements of this Court, it emerges that the revisional jurisdiction can be invoked where the decisions under challenge are grossly erroneous, there is no compliance with the provisions of law, the finding recorded is based on no evidence, material evidence is ignored or judicial discretion is exercised arbitrarily or perversely. These are not exhaustive classes, but are merely indicative. Each case would have to be determined on its own merits.

13. Another well-accepted norm is that the revisional jurisdiction of the higher Court is a very limited one and cannot be exercised in a routine manner. One of the inbuilt restrictions is that it should not be against an interim or interlocutory order. The Court has to keep in mind that the exercise of revisional jurisdiction itself should not lead to injustice ex facie. Where the Court is dealing with the question as to whether the charge has been framed properly and in accordance with law in a given case, it may be reluctant to interfere in exercise of its revisional jurisdiction unless the case substantially falls within the categories aforesaid. Even framing of charge is a much advanced stage in the proceedings under CrPC."

29. The Court in para 27 has recorded its conclusion and laid down principles to be considered for exercise of jurisdiction under Section 397 particularly in the context of quashing of charge framed under Section 228 CrPC. Paras 27, 27.1, 27.2, 27.3, 27.9 and 27.13 are extracted as follows: (Amit Kapoor case [Amit Kapoor v. Ramesh Chander, (2012) 9 SCC 460 : (2012) 4 SCC (Civ) 687 : (2013) 1 SCC (Cri) 986] , SCC pp. 482-83)

"27. Having discussed the scope of jurisdiction under these two provisions i.e. Section 397 and Section 482 of the Code and the fine line of jurisdictional distinction, now it will be appropriate for us to enlist the principles with reference to which the Courts should exercise such jurisdiction. However, it is not only difficult but is inherently impossible to state with precision such principles. At best and upon objective analysis of various

judgements of this Court, we are able to cull out some of the principles to be considered for proper exercise of jurisdiction, particularly, with regard to quashing of charge either in exercise of jurisdiction under Section 397 or Section 482 of the Code or together, as the case may be:

27.1. Though there are no limits of the powers of the Court under Section 482 of the Code but the more the power, the more due care and caution is to be exercised in invoking these powers. The power of quashing criminal proceedings, particularly, the charge framed in terms of Section 228 of the Code should be exercised very sparingly and with circumspection and that too in the rarest of rare cases.

27.2. The Court should apply the test as to whether the uncontroverted allegations as made from the record of the case and the documents submitted therewith prima facie establish the offence or not. If the allegations are so patently absurd and inherently improbable that no prudent person can ever reach such a conclusion and where the basic ingredients of a criminal offence are not satisfied then the Court may interfere.

27.3. The High Court should not unduly interfere. No meticulous examination of the evidence is needed for considering whether the case would end in conviction or not at the stage of framing of charge or quashing of charge.

27.9. Another very significant caution that the Courts have to observe is that it cannot examine the facts, evidence and materials on record to determine whether there is sufficient material on the basis of which the case would end in a conviction; the Court is concerned primarily with the allegations taken as a whole whether they will constitute an offence and, if so, is it an abuse of the process of Court leading to injustice.

27.13. Quashing of a charge is an exception to the rule of continuous prosecution. Where the offence is even broadly satisfied, the Court should be more inclined to permit continuation

of prosecution rather than its quashing at that initial stage. The Court is not expected to marshal the records with a view to decide admissibility and reliability of the documents or records but is an opinion formed prima facie."

30. Applying the above tests, we are of the considered opinion that the High Court erred in quashing the charges framed by the order dated 5-5-2009. In the result, both the appeals are allowed. The order of the High Court is set aside and the order dated 5-5-2009 is restored. The learned Special Judge may proceed with the trial in accordance with the law expeditiously."

36. If there is a strong suspicion, which leads the Court to think that there is ground for presuming that the accused has committed an offence, then it is not open to the Court to say that there is no sufficient ground for proceeding against the accused. The presumption of the guilt of the accused which is to be drawn at the initial stage is only for the purpose of deciding prima facie whether the Court should proceed with the trial or not, as has been held in 2015 2 SCC 417 (State Vs. A.Arun Kumar).

37. No mini trial is contemplated at the stage of framing of charges or at the stage of considering the validity of such charges framed. Defective or illegal investigation is not a ground for a charge to be held as not maintainable. For this proposition, it is relevant to refer to the decision of the Honourable Supreme Court reported in 2014 11 SCC 709 (State of Tamil Nadu Vs. N.Suresh Rajan and others), wherein, it has been held thus:-

"29. True it is that at the time of consideration of the applications for discharge, the Court cannot act as a mouthpiece of the prosecution or act as a post office and may sift evidence in order to find out whether or not the allegations made are groundless so as to pass an order of discharge. It is trite that at the stage of consideration of an application for discharge, the Court has to proceed with an assumption that the materials brought on record by the prosecution are true and evaluate the said materials and documents with a view to find out whether the facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the alleged offence. At this stage, probative value of the

materials has to be gone into and the Court is not expected to go deep into the matter and hold that the materials would not warrant a conviction. In our opinion, what needs to be considered is whether there is a ground for presuming that the offence has been committed and not whether a ground for convicting the accused has been made out. To put it differently, if the Court thinks that the accused might have committed the offence on the basis of the materials on record on its probative value, it can frame the charge; though for conviction, the Court has to come to the conclusion that the accused has committed the offence. The law does not permit a mini trial at this stage.

32. While passing the impugned orders, the Court has not sifted the materials for the purpose of finding out whether or not there is sufficient ground for proceeding against the accused but whether that would warrant a conviction. We are of the opinion that this was not the stage where the Court should have appraised the evidence and discharged the accused as if it was passing an order of acquittal. Further, defect in investigation itself cannot be a ground for discharge. In our opinion, the order impugned [N. Suresh Rajan v. Inspector of Police, Criminal Revision Case (MD) No. 528 of 2009, order dated 10-12-2010 (Mad)] suffers from grave error and calls for rectification."

38. The decisions relied on by the learned counsel for the Petitioners are in respect of the decisions rendered after a full fledged trial, in appeal. Hence, the said decisions cannot be made applicable to the case on hand.

39. In respect of the contention of the learned counsel for the Petitioners that the Petitioners/A1, A2 and A3, cannot be tried in a joint trial, the facts of the case on hand are different and the Trial Court has disbelieved that they have separate sources of income and has not accepted their explanation. The allegations against the Petitioners are that they have abetted the main accused Officer/A1 in commission of the offence and hence, there is no impediment for a joint trial since they are not tried for separate charge for having disproportionate assets.

40. As rightly pointed out by the learned Additional Public Prosecutor, this Court finds that there are enough and sufficient materials against the accused/

Petitioners for having abetted A1, accused Officer. Explanation has been sought for in respect of all properties in the name of all the Petitioners and after considering the explanation and taking into account all the materials only, the final report has been filed. The Statement-I is the details of the assets standing in the name of A1 and his family Members, A2 to A6, as on 1.4.2003. The Statement-II is the details of the assets that stood to the credit of A1 and his family Members, A2 to A6, at the end of the check period i.e. as on 3.1.2008. The Statement-III is the details of the income from known sources during the check period from 01.04.2003 to 03.01.2.008. The Statement-IV is the details of expenditure incurred by A1 and his family Members, during the check period from 01.04.2003 to 03.01.2.008. The Statement-V is the value of the assets acquired by A1 during the check period from 01.04.2003 to 03.01.2.008. The Statement-VI is the details of likely saving during the check period from 01.04.2003 to 03.01.2.008. The Statement-VII is the calculation, wherein the disproportionate assets have been assessed to 291% during the check period from 01.04.2003 to 03.01.2.008. Further, 104 witnesses have been cited in the charge sheet.

41. The Court below, while considering the discharge petitions, though not warranted under law, has held that there is no material placed by the Petitioners to show that they earned from the real estate business and that there is also no proof that the said properties have been purchased after obtaining permission from the concerned authority and that the contention of the Petitioners that the documents filed under Section 91 of Cr.PC should be considered cannot be entertained. It was also found that the real estate business was created only with a view to protect the properties acquired against law, since in the real estate business, the partners are none other than the Petitioners only. While passing the impugned orders, the Trial Court has rightly sifted the materials for the purpose of finding out whether or not there is sufficient ground for proceeding against the accused and not whether that would warrant a conviction. It was finally held by the Court below that the relief of discharge as claimed by the Petitioners can be decided only after a full fledged trial and accordingly, dismissed the discharge petitions. Based on the materials available, the Trial Court has dismissed the petitions for discharge.

42. As submitted earlier, when the Trial Court comes to a conclusion that there are materials available for framing charges, option available to the Court is only to frame that charges, rather than conducting a roving enquiry or a mini trial. This Court is of the opinion that the Trial Court, having found that there are enough materials available, has rightly framed charges.

43. For the foregoing reasons and in the light of the decisions cited supra, this Court is of the considered view that it is not the stage where the Court can appraise the evidence and discharge the accused and hence, the impugned orders do not suffer from grave error and consequently, no interference by this Court can be made to the impugned orders.

44. In the result, these Criminal Revision Petitions are dismissed. No costs. However, it is made clear that any observation made in this order is for the purpose of disposing of these Criminal Revision Petitions and shall have no bearing on the Trial and that the Trial Court shall proceed with the Trial, in accordance with law.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

Srcm

To:

- 1.The Chief Judicial Magistrate/Special Judge, Chengalpattu.
- 2.The Public Prosecutor, High Court, Madras,
- 3.The Inspector of Police, Vigilance and anti-Corruption, Kancheepuram

+5ccs to Mr.A.Gopinath , Advocate SR.No. 18298,18299,18300, 1801,18302

Crl.RC.Nos.228 to 232 of 2019

A.SK(19/03/2019)

सत्यमेव जयते

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